In the Supreme Court of the United States

OCTOBER TERM, 1973

No. 73-831

WARDEN, LEWISBURG PENITENTIARY, PETITIONER

v.

BENIGNO MARRERO

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

INDEX

	Page
Relevant Docket Entries	1
Opinion of the Court of Appeals (May 14, 1973) (Pet. Appendix A)	(Petition 1a)
Judgement of the Court of Appeals (August 27, 1973) (Pet. Appendix B)	(Petition 14a)
Memorandum and Order of the District Court (July 26, 1972) (Pet. Appendix C)	(Petition 15a)
Petition for a writ of habeas corpus (February 24, 1972)	6
Order of the District Court to show cause and granting leave to proceed in forma pauperis (February 24, 1972)	10
Notice of Appeal (July 28, 1972)	11
Order of the Court of Appeal enlarging time to file petition for rehearing (September 14, 1973)	12
Order of the Court of Appeals denying a petition for recall and stay of mandate (October 23, 1973)	13
Order of Mr. Justice Brennan staying the mandate of the Court of Appeals (October 25, 1973)	14
Order allowing certiorari (January 7, 1974)	15

DOCKET ENTRIES

DATE 1972	PROCEEDINGS
Feb. 24,	1. PETITION—for writ of Habeas Corpus w/affidavit to proceed in forma pauperis.
Feb. 24,	2. ORDER—It is ordered that Marrero be permitted to prosecute this action in forma pauperis. It is further ordered that Rule is hereby granted upon the respondent, Noah Alldredge, to show cause why the petition should not be granted. Rule returnable March 8, 1972. (N) (Copies to: Petitioner; Alldredge; U.S. Attorney and Atty. Jordan.)
Feb. 24,	3. MOTION—to admit Counsel (Batchelder & Witmeyer) *pro hoc vice* for the relator in this action, for all purposes. Motion signed by Richard Jordan, atty. for service of papers.
Feb. 24,	4. MEMORANDUM—of Law in Support of Petition for Writ of Habeas Corpus.
Mar. 8,	5. RESPONSE—from the Respondent, Asst. US Attorney Nagle to the rule to show cause, with Certificate of Service attached thereto.
Mar. 17,	6. REPLY MEMORANDUM OF LAW filed by respondent, with certificate of service attached thereto.
June 30,	7. LETTER—from Atty. J. J. Witmeyer III dated June 28, 1972 addressed to Judge Nealon. (Xerox copy to Asst. U.S. Atty Nagle)
July 6,	8. ORDER—Now, July 6, 1972, it is Ordered that the parties submit to the Court within ten (10) days Memoranda of Law addressed to the following issue:

1972		PROCEEDINGS
		(1) Whether habeas corpus is the proper remedy to determine petitioner's parole eligibility. (N). (Copies to: Petitioner; Respondent; Atty. Jordan and Asst. U.S. Atty. Nagle.)
July 14,	9.	MEMORANDUM OF LAW—from Relator and, CERTIFICATE OF SERVICE—upon Asst. U.S. Atty. Nagle.
July 17,	10.	MEMORANDUM OF LAW—from Asst. U.S. Atty. Nagle and, CERTIFICATE OF SERVICE—upon Atty. Witmeyer & Atty. Jordan.
July 19,	11.	LETTER—dtd. July 18, 1972 from Asst. U.S. Atty. Nagle to Judge Nealon with copies to Atty. Witmeyer & Atty. Jordan.
July 20,	12.	SUPPLEMENTAL MEMORANDUM OF LAW—from Relator and, CERTIFICATE OF SERVICE—upon Asst. U. S. Atty. Nagle.
July 24,	13.	LETTER—fr Atty. J. J. Witmeyer III Dated July 20, 1972, addressed to Judge Nealon, and, CERTIFICATE OF SERVICE—upon Asst. U.S. Atty. Nagle.
July 26,	14.	MEMORANDUM— and, ORDER—This 26th day of July, 1972, in accordance with the memorandum this day filed, the petition of Benigno Marrero for a Writ of Habeas Corpus is denied. (N). (Copies to: Petitioner; Respondent; Atty. Jordan; Atty. Batchelder, Jr.; Atty. Witmeyer; and U.S. Asst. Atty. Nagle.)

1972		PROCEEDINGS
Aug. 3,	15.	NOTICE OF APPEAL—filed by petitioner. and, CERTIFICATE OF SERVICE—upon Asst. U.S. Atty. Nagle. (Copy to: Clerk, Court of Appeals.)
Aug. 7,		RECORD ON APPEAL—mailed to U.S. Court of Appeals.
Aug. 9,	16.	RECEIPT—for Record on Appeal received from Court of Appeals.
Sept. 14,	17.	Received letter from T. F. Quinn, Clerk, CCA, advising that HC 1435 was docketed in that court at No. 72-1842, filed 9-12-72.
1973		
Sept. 7,	18.	OPINION—of the Court of Appeal filed 8-27-73 stating "The judgment of the district court will be reversed and the case remanded for the entry of judgment granting the writ of habeas corpus with the direction that Marrero be released if he is not considered for parole within 60 days."
Oct. 3,	19.	JUDGMENT—Certified copy of Judgment of Court of Appeals reversing and the cause is remanded to said District Court with directions to enter judgment granting the writ of habeas corpus with the direction that Marrero be released if he is not considered for parole within sixty days in accordance with the opinion of this Court. (Gibbons & Rosenn, Circuit Judges)
Oct. 3,		Case file received from CCA 10-3-73 and returned to our files. Receipt was acknowledged of having received the records.
Oct. 23,	20.	ORDER—Now, this 23rd day of October, 1973, in accordance with the judgment ordered by the Third Circuit Court of Appeals on August 27, 1973, it is hereby ordered that a writ of habeas corpus is granted and that petitioner shall be re-

leased from custody by respondent within sixty (60) days from the date of the judgment if he is considered for parole by the expiration of those sixty (60) days. (N). (Copy to: Petitioner; Respondent; Harry C. Batchelder, Jr., Esq.; Richard Jordan, Esq.; Harry A. Nagle; and John J. Whitmeyer, III, Esq.)

Oct. 25, 21. CORRECTED ORDER—Now, this 25th day of October, 1973, in accordance with the judgment ordered by the Third Circuit Court of Appeals on August 27, 1973, it is hereby ordered that a writ of habeas corpus is granted and that petitioner shall be released from custody by respondent within sixty (60) days from the date of the judgment if he is *not* considered for parole by the expiration of those sixty (60) days. (N). (Copy to: Petitioner; Respondent; Harry C. Batchelder; Richard Jordan, Esq.; Harry A. Nagle; and J. J. Whitmeyer, III, Esq. and C.C.A.)

Oct. 30, 22. COPY OF SUPREME COURT ORDER—dated 10-25-73—Upon consideration of the application for the petitioner (Warden) and the opposition filed thereto,

It is ordered that the mandate of the U. S. Court of Appeals for the Third Circuit in case No. 72-1842 be, and the same is hereby, stayed pending the timely filing of a petition for a writ of certiorari in the above-entitled cause. Should such a petition be so timely filed, this stay is to remain in effect pending this Court's action on the petition. If the petition for a writ of certiorari is denied, this stay is to terminate automatically. In the event the petition for a

writ of certiorari is granted, this stay is to continue pending the sending down of the judgment of this Court.

/s/ WILLIAM J. BRENNAN, JR.
Associate Justice of the Supreme Ct.

Copy handed to Judge Nealon.

Case file to Judge Nealon 1-4-74 Per F. K.